

MINUTES
COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California

March 30, 2000

9:30 A.M. - PUBLIC SESSION

Present: Member Floyd Shimomura (Voted on Items 4, 5, 6, 7, 8, and 9)
 Representative of the Director of the Department of Finance
 Member Philip Angelides (Present for Item 10 only)
 Representative of the State Treasurer
 Member William Sherwood
 Representative of the State Treasurer
 Member Millicent Gomes
 Representative of the Director of the Office of Planning and Research
 Member Richard Chivaro (Present for Item 10 only)
 Representative of the State Controller
 Member Michael Foulkes
 Representative of the State Controller
 Member Albert Beltrami
 Public Member
 Member Joann Steinmeier
 School Board Member
 Member John Lazar
 City Council Member

CALL TO ORDER AND ROLL CALL

Chairperson Angelides called the meeting to order at 9:39 a.m. He welcomed the new Commission member, John Lazar, member of the Turlock City Council.

EXECUTIVE DIRECTOR'S REPORT

Item 10	Workload, Special Education Negotiations, Local Claims Bill, Legislation, Governor's Budget, etc.
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Special Education: Report on Negotiations

Parties were represented as follows: Jack Clarke, with the Riverside County Superintendent of Schools; Diana McDonough, with the supplemental claimants and on behalf of the Education Mandated Cost Network and the Education Legal Alliance; Kenneth Hall and Bill Whiteneck, with the School Services of California; and, Kathryn Gaither and Dan Stone, with the Department of Finance.

Ken Hall reported that, after five meetings between the parties, the education community had noted such philosophical differences between the parties that they were hereby calling upon the Commission to put back on its agenda the consideration of parameters and guidelines at its next meeting. While the education community looked forward to continuing discussions with the administration, they did not believe that discussions were likely to be productive. Mr. Hall added that they had not received sufficient response from the administration to be able to assure the Commission that the negotiations would reach a conclusion. He submitted that the education community had approached the discussions with an open mind and had reviewed the Department of Finances' numbers. They used a sample of representatives and worked with SELPA administrators. Using staff's proposed parameters and guidelines, they determined what the cost estimates would be for the eight mandate claims for fiscal year 1998-99, and then used that data to develop a statewide number. Mr. Hall reported that this number was not acceptable to the administration and that the administration did not respond with a return number.

Chairperson Angelides asked if Mr. Hall would characterize the nonresponse to those numbers unacceptable as to the methodology or the amount owed. Mr. Hall replied that there had never been a full discussion of the methodology and thus no rejection of it. He submitted that the rejection of the education community's numbers was based upon the issue relating to the offset.

Bill Whiteneck submitted that the parties have had good progress on the process, but poor progress on reaching an actual settlement amount. He proposed that the Commission follow a parallel process, in which the Commission would go forward with its process while the parties continued to negotiate.

Dan Stone agreed that the discussions had been significant, but had not reached a point of agreement. He noted that the Department of Finance has continued hope that resolution can be achieved within the context of these negotiating sessions and felt it would be worthwhile if the discussions were pursued. Mr. Stone preferred not to mention details of the discussions before the public or the Commission. He added that DOF has been a willing participant in the discussions and looks forward to future discussions.

[No one responded to Chairperson Angelides' invitation for public comment.]

Member Steinmeier agreed with the proposal for a parallel process. She was hopeful that the negotiations would reach a conclusion, but noted that the Commission has a responsibility to complete its piece. Member Steinmeier proposed the Commission put it back on its agenda 30 or 60 days from today.

Member Chivaro asked staff if the Commission could put this item back on its agenda without a 30-day written notice. Ms. Higashi responded that it could not.

Chairperson Angelides urged the parties to continue negotiations. He noted his belief that, if the issue goes through litigation, there will be unintended and undesirable consequences. He also wished to ensure that the children of the state entitled to special education services receive the proper level of services and that districts are compensated for providing those. The Chair was hopeful that the administration would proceed in a way that would lead to fiscal stability in the long term and adequate funding for special education services. Upon receipt of the letter from claimants, he noted that the Commission would schedule the issue for its May 25, 2000 hearing. He reiterated his belief that it is in the best interests of school districts, the administration, and the state to bring this matter to a fair resolution for the matter of predictability.

[A brief recess was taken. Upon return, Member Sherwood replaced Member Angelides, and Member Shimomura was present as Chair, representing the Director of the Department of Finance.]

Other Items of Business

Paula Higashi reported the following:

- The Commission continues to receive a few new filings each month. The incorrect reduction claim workload remains unchanged, though staff is working with the parties to enable an appropriation this year for *Open Meetings Act* claims. Staff is also creating a hearing calendar for the year 2001 to schedule all pending test claims in anticipation of success if the Governor's Budget goes through.
- The Local Claims Bill, SB 1894, has been introduced and will be completed as the remaining statewide cost estimates are adopted.
- SB 1982, part of CSAC's reform package, is set for hearing next week in the Local Government Committee.
- Additional drafting and amendments are expected for AB 2624, which addresses many Government Code provisions affecting the Commission and the State Controller's Office. This bill will also be heard next week in the Local Government Committee.
- On Friday, March 31, 2000, staff will hold a workshop to review the pending rulemaking proposals and dismissals and cleanup amendments to implement last year's legislation.
- The Commission staff will be in the new office at the U.S. Bank Plaza, 980 Ninth Street, third floor, as of May 1, 2000.
- The proposed agenda for April includes a test claim, proposed statements of decision, a statewide cost estimate, and the dismissal of the *Special Education* test claim. Review of the State Controller's Office claiming instructions may also be scheduled.

Member Steinmeier asked for clarification of the status on the dismissal of the *Special Education* claim. Ms. Higashi explained that the Commission had requested staff notice and scheduled the complete dismissal of the Santa Barbara claim. Staff followed the request by Long Beach Unified School District and notified every school district in the state that this item would be set for dismissal. Member Steinmeier clarified that the Commission could still do a complete or partial dismissal.

APPROVAL OF MINUTES

Item 1 February 24, 2000

Item 2 March 7, 2000

Upon motion by Member Sherwood and second by Member Gomes, the minutes for the February 24, 2000 Commission hearing were unanimously approved. Members Steinmeier, Shimomura, and Lazar abstained.

Upon motion by Member Sherwood and second by Member Beltrami, the minutes for the March 7, 2000 Commission hearing were unanimously approved. Member Shimomura abstained.

PROPOSED CONSENT CALENDAR

PROPOSED STATEMENTS OF DECISION

- Item 5 *School Crimes Reporting II* - 97-TC-03
San Diego Unified School District, Claimant
Penal Code Sections 628.2 and 628.6
Statutes of 1996, Chapter 410
Title 5, California Code of Regulations, Sections 700-704
- Item 7 Request For Removal from the State Mandates Apportionment
System: *Developmentally Disabled Attorney Services* –
98-RSMAS-01
County of Tulare, Requester
Statutes of 1975, Chapter 694

ADOPTION OF PROPOSED STATEWIDE COST ESTIMATES

- Item 8 *Seismic Safety Retrofit Program* – CSM 98-4390-PGA-09
County of Los Angeles, Requester
Streets and Highways Code Sections 179.3 and 179.4
Statutes of 1989, Chapter 18
Statutes of 1990, Chapter 1082
- Item 9 *Very High Fire Hazard Severity Zones* – CSM-97-TC-13
City of Redding, Claimant
Government Code Sections 51175 through 51189
Health and Safety Code Sections 13108.5 & 13132.7
Statutes of 1992, Chapter 1188
Statutes of 1994, Chapter 843
Statutes of 1995, Chapter 333

Hearing no objection, Chairperson Shimomura called for a roll call vote. The proposed consent calendar, consisting of Items 5, 7, 8, and 9, was adopted unanimously.

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

TEST CLAIMS

- Item 4 *Involuntary Transfers* – CSM 4459
San Diego Unified School District, Claimant
Education Code Section 48432.5 and 48637.1–48637.3
Statutes of 1978, Chapters 668 and 1256

[Ms. Higashi swore in the witnesses en masse.]

Paula Higashi introduced this item, noting that the test claim statutes require school districts to adopt rules and regulations governing procedures for the involuntary transfer of students to continuation schools and opportunity schools, classes, or programs. She explained that staff's 1997 analysis recommended only a partial approval of the claim. The current analysis presented the Commission with Option 1, to approve the claim, or Option 2, to partially approve the claim. Staff recommended Option 1, based on staff's review of the test claim, the draft staff analysis, and comments filed by the claimant.

Ms. Higashi noted that the claimant filed a letter on March 22, 2000 in support of Option 1 and cited case law in opposition to Option 2. On March 27, 2000, Mr. Paul Minney also filed a letter supporting Option 1. The evening before the hearing, the Department of Finance faxed a request for an extension of time.

Parties were represented as follows: Carol Berg, with the Education Mandated Cost Network; Jim Cunningham, with the San Diego Unified School District; Paul Minney, with Girard & Vinson, on behalf of Mandated Cost Systems, Inc.; and Jeff Bell and Jeannie Oropeza, with the Department of Finance.

Mr. Bell asked the Commission for an extension of time in order for the Department of Finance (DOF) to appropriately represent the state in its response to the revised staff analysis. He noted that DOF did notify staff by telephone the prior Friday that they would be requesting the extension. Ms. Oropeza added that the DOF received staff's recent analysis on March 20, 2000. The DOF staff that was responsible for reviewing the 1997 analysis no longer worked at DOF.

Mr. Cunningham asked the Commission not to approve the request for an extension of time.

Member Steinmeier was not in favor of a postponement since all parties were at the same disadvantage and the 1997 material was available.

Member Gomes disagreed, noting that she would like as much information as possible on the issue.

Member Foulkes agreed that the issue was fairly complicated and that there have been some recent notes. He submitted that it would not hurt to have more time to review.

Being new, Member Lazar said he would also appreciate having more time.

Member Sherwood disliked the idea of postponing, and was bothered by the frequency of postponements. However, he did not want to make a decision on an important matter without having both sides represented fully. Understanding there had been a change in staff's approach on this issue since 1997, Member Sherwood reluctantly agreed to postpone. Member Beltrami agreed.

Mr. Cunningham requested the Commission give the DOF a specific date to provide comments prior to the next hearing to avoid this problem again.

Ms. Higashi replied that the DOF comments would be due by the following Thursday or Friday. Chairperson Shimomura postponed the item to the April hearing.

STATEMENTS OF DECISION

Item 6	<i>Standardized Emergency Management Systems (SEMS) –</i>
	CSM 4506
	County of San Bernardino, Claimant
	Government Code Section 8607
	CCR, Title 19, Sections 2400-2450
	Statutes of 1992, Chapter 1069

Pat Hart Jorgensen introduced this item. She noted that the Commission heard this test claim on January 27, 2000 and again on February 24, 2000. At the latter hearing, the Commission unanimously denied the test claim finding that the application of the Sacramento II and Hayes

factors evidenced this test claim legislation and implementing regulations are not coercive and that local agencies adopting SEMS have freely chosen to do so.

Member Gomes moved to reconsider the Commission's vote on the test claim based on her understanding that the Commission members were voting whether or not SEMS was a state mandated program, and not necessarily on the application of those factors. The Chair noted that Member Gomes had made the motion at the last hearing to adopt this approach. She agreed, and explained that she had not realized the recommendation included the *Sacramento II* and *Hayes* factors as evidence. Member Steinmeier seconded the motion.

Ms. Jorgensen noted that, under Robert's Rules, a member can move to reconsider a vote, and the Commission can vote whether or not to reconsider. However, the Commission cannot vote to approve or deny the test claim because it is not on the agenda.

Members Gomes and Steinmeier agreed that it was not clear among the members or in the record as to why the Commission voted to deny the claim. Member Steinmeier did not see the Commission reversing its decision, but it would allow the Commission to clarify its rationale.

Ms. Jorgensen explained that the item would be noticed as an action item if the Commission decided today to reconsider its vote. Ms. Higashi added that the Commission had reconsidered a vote once before prior to adoption of the statement of decision and did not change its original finding. By taking this action today, the Commission was indicating that the statement of decision did not accurately reflect the decision of the Commission.

Parities were represented as follows: Marcia Faulkner, with the County of San Bernardino; Geoffrey Graybill, representing the Department of Finance; and, Jim Lombard, with the Department of Finance.

Mr. Graybill submitted that the Commission could, at today's meeting, instruct staff on what changes to make to the decision so it would accurately reflect their findings. He did not know if a motion for reconsideration was necessary.

Ms. Jorgensen replied that Member Gomes' motion was specific—she voted to adopt Option 2 and staff could not rewrite its statement of decision because the motion was specific. Ms. Jorgensen stated that a reconsideration was appropriate. Chairperson Shimomura agreed.

Ms. Faulkner agreed that there was a lot of confusion over the reasons for denial and she would appreciate clarification.

The Commission unanimously voted to reconsider the vote. The item will be scheduled for the April hearing.

TEST CLAIMS

- Item 3 *School Site Councils and Brown Act Reform*– CSM 4501
Kern Union High School District, San Diego Unified School
District, and County of Santa Clara, Co-Claimants
Education Code Section 35147
Government Code Section 54952
Statutes of 1993, Chapter 1138
Statutes of 1994, Chapter 239

[Due to involvement with this issue during his previous employment with the Attorney General's Office, Member Shimomura recused himself. He further noted that he would not be participating in Closed Executive Session. Member Sherwood assumed the role of Chair.]

Pat Hart Jorgensen introduced this item. She explained that, while it is clear that the Brown Act has applied to the governing bodies of school districts since 1962, it is unclear when these school site councils (councils) and advisory committees (committees) created by state or federal law became subject to the Brown Act. The test claim statute expanded the definition of "legislative body" to include legislative bodies created by state or federal law. Three months later, the second test claim statute exempted eight specified councils and committees from certain Brown Act requirements, while retaining the requirement to prepare and post a notice and agenda.

Ms. Jorgensen noted that staff found that all of the school site councils were created either by state or federal statute and thus first became subject to the Brown Act when Government Code section 54592 was amended in 1993. Staff concluded that Education Code section 35147 imposes a new program or higher level of service by requiring advisory bodies prepare and post agendas of their meetings. If the Commission disagrees, it must continue its inquiry to determine if the test claim legislation imposes a higher level of service upon councils and committees.

Ms. Jorgensen noted that staff disagreed with Department of Finance (DOF) and found that the test claim legislation requirements exceed the federal requirements. Staff further found that there is no authority for the position that a legislative body must have been created in response to a state mandate in order to be eligible for reimbursement or compliance with the Brown Act. Staff concluded that the test claim legislation expanded the notice requirements under the Brown Act. Ms. Jorgensen added that the issue before the Commission is not whether the councils and committees are state mandated, rather, it is whether the Brown Act applied to their meetings.

Parties were represented as follows: Carol Berg, with the Education Mandated Cost Network; Ron Fontaine, with the Kern High School District; Jim Cunningham, with the San Diego Unified School District; Paul Minney, with Girard and Vinson, on behalf of Mandated Cost Systems, Inc.; Jeannie Oropeza, with the DOF; and, Leslie Lopez, with the Attorney General's Office on behalf of the DOF.

Mr. Cunningham submitted that the test claim does not allege a mandate to create school site councils, rather, it alleges a mandate regarding the Open Meetings requirements imposed on school site councils. He contended that the Commission has formerly held that, if a requirement was added after a school district makes a voluntary decision, because it is mandatory, districts are entitled to reimbursement. Further, the Commission has already determined that the same activities set forth in this test claim statute are reimbursable.

Mr. Cunningham alleged that this legislation merely continued most of those requirements from

the Government Code into the Education Code. He agreed with staff's analysis. Dr. Berg and Mr. Minney also supported staff's recommendation, noting their belief that DOF was incorrectly sidetracked from the actual issue.

Ms. Lopez explained the DOF's position that districts created councils and committees voluntarily and that they have been subject to the Brown Act since the 1960s.

Member Sherwood recognized the claimants' contention that whether the councils and committees are voluntary or not makes no difference—the Commission could make a decision with staff's finding without discussing that issue. Mr. Cunningham agreed that that was his understanding of staff's recommendation.

Member Sherwood asked for clarification as to why the claimants submitted that councils are mandatory at the school level. Mr. Cunningham replied that there is a requirement for schools to form councils to decide whether they are going to participate in programs. The decision is made at the school site level.

Ms. Oropeza argued that not every district has a school site council, which implies they are not mandatory. She further submitted that the 1993 legislation simply clarified who was required to adhere to the Brown Act requirements and it reduced the requirements for those committees.

Dr. Berg disagreed. She noted that, in reality, it was not until after the Brown Act Reform that the councils were considered legislative bodies created by the Board of Education. Before that, there were no agendas and there were not open meetings.

Member Steinmeier confirmed Dr. Berg's testimony. She submitted that, before 1993, the committees were informal. The 1993 changes were cataclysmic—the committees truly became legislative bodies. She was unaware of any district that does not have site councils at almost every school because funding is directly attached to them.

Member Foulkes agreed with the claimants and Member Steinmeier regarding people's perceptions at the time. However, the Controller's Office agreed with DOF that the councils *should have been* practicing under the Brown Act. Member Foulkes submitted that the question remaining was whether there are additional requirements.

Members Beltrami and Steinmeier asked why the Controller thought the 1993 law was passed. Member Foulkes suggested that the legislature was clarifying the law. Ms. Lopez submitted that the 1993 legislation did not add any new Brown Act requirements and that the Education Code amendments reduced the requirements. In response to Member Beltrami's inquiry, Ms. Lopez said the Attorney General does not enforce the Brown Act.

Mr. Cunningham submitted that, for the DOF to be successful in saying the committees were covered before 1993, they have to show that they were an advisory committee to the school board, which they are not, and, they must show that the committees were created by a formal action of the school board, which they were not. Even so, Mr. Cunningham maintained that the Open Meetings requirements were first imposed in 1986, and the Commission already found those activities reimbursable.

Member Steinmeier asked if claimants wished to comment on the federal programs. Mr. Cunningham agreed with staff's analysis that the main activity, preparation of an agenda, is not required under federal law but is required under state law.

Member Foulkes asked staff to comment on Mr. Cunningham's contention that this is a continuation of what the Commission found in 1986. Ms. Jorgensen replied it was her understanding that the original *Open Meetings Act* test claim did not make any distinction as to whether any of the programs were state mandated. Dr. Berg confirmed that local districts did not approve the bodies until after the Consolidated Application Program came into play.

Mr. Cunningham analogized that, if a city were formed, which is a discretionary act, it would obviously have mandates imposed on it. He submitted that the activity in this claim is the same activity that is reimbursable under the Open Meetings Act statute. Dr. Berg agreed. Member Gomes clarified that that was in respect to posting the agenda but not necessarily the creation of the programs themselves.

Member Steinemeier agreed with Mr. Minney that the Commission's decision on *School Accountability Report Cards* (SARCS) offered a good parallel—if a school (voluntarily) had a Web site, it was a mandate to post the information. She moved for the Commission to find that this test claim has a reimbursable state mandated program and that the staff's recommendation was a part of that motion. Member Lazar seconded the motion. Member Sherwood clarified that whether or not the program was voluntary has no effect. He asked for more detail regarding SARCS.

In response, Mr. Cunningham explained that schools decided to offer Web sites before the requirement to post SARCS existed, so the requirement did not come into play when deciding whether to have a website. Ms. Higashi recalled that the Commission allowed reimbursement only for activities and costs directly related to the information requirements imposed by the superintendent and the legislation for the gathering of data, compilation, preparation, and actual posting on the Internet. She added that the Commission did not include as reimbursable the establishment of the Internet connection.

Discussion involving the voluntary nature of the programs ensued. The DOF continued to maintain its position that these programs were voluntary and were always subject to the Brown Act, while the claimant argued that funding ties coerced districts into creating the programs.

Member Steinmeier offered to amend her motion to include that the programs are not truly voluntary. However, she noted that the Commission would need to have a full discussion on this issue and include it in its rationale for finding a mandate.

Member Gomes did not want to set any precedents for the Commission to vote on whether or not programs were voluntary, though she was open for discussion on the issue. Member Steinmeier replied that that has already been done in SARCS and other decisions.

Member Sherwood wanted to be clear that the Commission was silent on the voluntary issue when voting on this issue. Member Steinmeier agreed, and noted that her original motion would assume that the Brown Act did not apply to school site councils before the 1993 legislation. Member Gomes questioned if this would be an appropriate decision if the law was not necessarily followed, but was legally on the books before 1993. Member Steinmeier replied that the school board did not create the council before then.

Member Foulkes asked if the Commission had any evidence of what schools did before then besides oral testimony. Mr. Cunningham noted that he had provided some legislative history that spoke to Member Foulkes' concern. Member Steinmeier submitted that the evidence is not

anecdotal and referenced the letter to Governor Wilson on Bates page 0013. She offered to get data from CSBA.

Member Steinmeier stated that her original motion stood. On a roll call vote, the motion passed 4-2, with Members Gomes and Foulkes voting “No.”

Member Beltrami added that he was taken by Ms. Hill’s letter and its comparisons on *Hayes* and *Sacramento*. He hoped her comments would be considered in the future if those issues arise.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526.

Hearing no public comment, Chairperson Sherwood announced that the Commission would be recessing into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive legal advice from legal counsel for consideration and action as necessary and appropriate upon the pending litigation listed on the published notice and agenda.

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

- *County of San Bernardino v. State of California, et al.*, Case Number SCV52190, in the Superior Court of the State of California, County of Los Angeles.
- *County of Sonoma v. Commission on State Mandates, et al.*, Case Number A089524, in the Appellate Court of California, First Appellate District, Division 1.
- *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number GIC 737638, in the Superior Court of the State of California, County of San Diego.
- *Long Beach Unified School District v. Commission on State Mandates*, Case Number BS061159, in the Superior Court of the State of California, County of Los Angeles.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).).

B. PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Discussion and action, if appropriate, on report from Personnel Sub-Committee.

REPORT FROM CLOSED EXECUTIVE SESSION

The Chair announced that the Commission had met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal

counsel for consideration and action, as necessary and appropriate, upon pending litigation listed on the published notice and agenda; and, pursuant to Government Code section 11126, subdivision (a), and section 17527, to confer on personnel matters listed on the published notice and agenda.

ADJOURNMENT

Hearing no further comments, Chairperson Sherwood adjourned the meeting at 12:41 p.m.

PAULA HIGASHI
Executive Director

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2000 Hearing Calendar

(Most hearings are scheduled to be held on Thursdays.)

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